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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 16th April 2008

No. 4526—II/15-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th March 2008 in I. D. Misc. Case No. 2/2007 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s Paradeep Phosphates Ltd., Paradeep and their workman Shri Achyuta Charan Panda, Ex-Technical Assistant (MEO) was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE MISC. CASE No. 2 OF 2007
Dated the 17th March 2008

Present :

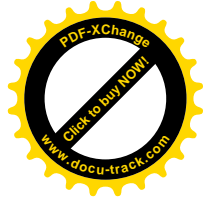
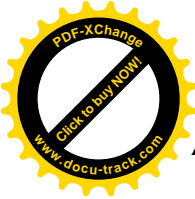
Shri Srikanta Nayak, O.S.J.S. (Sr. Branch)
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

Shri Achyuta Charan Panda, Pers. No. 0052 . . . Complainant—Workman
Technical Assistant (MEO), Paradeep
Phosphates Ltd., P.P.L. Township, Paradeep.

And

Managing Director, Paradeep Phosphates . . . Opposite Party—
Ltd., O.S.H.W.C.S. Building, Management.
At Jawaharlal Nehru Marg, Bhubaneswar-1,
Dist. Khurda.



Appearances :

The Complainant himself	.. Shri A.C. Panda
For the Opp. Management	.. Shri M.R. Panda, Manager (Law).

AWARD

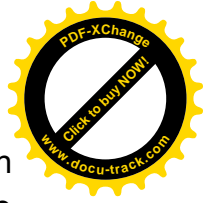
This Award arises out of a petition filed under Section 33-A of the Industrial Disputes Act, 1947 (for short the 'Act') by the complainant-workman.

2. The case of the complainant (hereinafter referred to as the 'workman') is that he was an employee of M/s Paradeep Phosphates Ltd., which was originally a Central Government company but thereafter it was taken over by M/s Zuari Maroc Phosphates Ltd. and Maroc Phosphore SA and the change of ownership occurred on the 28th February 2002. While the company was under the Central Government, it was decided that the age of retirement was 60 years but after it was taken over by the private person, a notice was issued to reduce the age of retirement to 58 years without prior consultation or notice to the Union. So, the Union raised a dispute and I.D. Case No. 16 of 2003 is pending. While that case was pending, on the 2nd August 2007 the management issued a notice to retire the workman on the 31st October 2007 on attaining the age of 58 years. He was a concerned workman in the pending dispute and the company tried to retire him without taking permission from the Tribunal. The act of the company affects the service conditions of the employee and the same is illegal. The workman, therefore, filed the present petition to declare the act of the management as illegal.

3. The case of the Opposite Party (herinafter referred to as the 'Management') is that the present complainant is not a workman because he has already been retired from service w.e.f. the 31st October 2007 and therefore industrial dispute can be raised only by a workman but not by an employee who has already been retired. The service conditions of the employees of the Paradeep Phosphates Ltd. (in short 'PPL') is governed by the Certified Standing Orders and as per the said Standing Orders, the retirement age of an employee is 58 years. The change of age of retirement of an employee is not as service condition covered under the Standing Orders. So, the present Misc. Case is not maintainable.

4. The workman examined one witness in support of his case and the management also examined one witness in support of its case.

5. W.W. No. 1 deposed that he joined the service on the 1st June 1983 and the P.P.L. was a Government undertaking then. As per the decision of the Government of India, the retirement age of the employees was 60 years and the P.P.L. in its Board meeting, dated the 19th November 1998 raised the retirement age to 60 years. The Company was taken over by the Zuari Maroc Phosphates Ltd. as per an agreement. On the 28th February 2002 a circular was issued reducing the age of retirement of the employees to 58 years and Ext. 3 is the said Circular. So, the Union raised a dispute and the same is pending. While the dispute is pending, the management retired him on the 31st October 2007 on completion of 58 years of age.



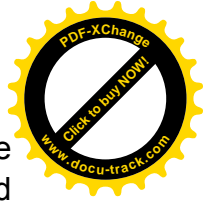
M.W. No. 1 deposed that the workman was appointed as per Ext. A attaching therewith the Service Rules, which regulated his service conditions. After the Standing Orders came into force, the service conditions of the employees were regulated by the said Standing Orders and as per the Standing Orders the retirement age is 58 years. On the 28th February 2002 the P.P.L. became a private limited company. The retirement age was enhanced to 60 years on experiment basis but after receiving direction from the Government the pay revision was effected after negotiation with the Unions and the Government asked to reduce the age of retirement to 58 years and Ext. E is the said letter. Thereafter the matter was discussed in the Board and the age of retirement of the employees was reduced to 58 years. As per the settlement, V.R. Scheme was introduced to reduce the surplus manpower and about 231 employees had taken voluntary retirement and their benefit was calculated taking the retirement age as 58 years and nobody raised any objection.

6. The fact which is no more in dispute is that the retirement one of the employee was enhanced to 60 years as evident from Ext. 1, the office order, dated the 19th November 1998 and the said order was withdrawn as evident from Ext. 3, dated the 17th July 2002 and the workman was retired from service on attaining the age of 58 years. All these factors are not at all challenged. The workman was retired on the 31st October 2007 but he filed this petition on the 29th October 2007 i.e. before his retirement. So, at the time of filing this case, the present workman was a workman. In the decision reported in AIR 1977 S.C. page-1229 (Bhavnagar Municipality Vrs. A. Karimbhai), their Lordships held that "in order to attract Section 33(1) (a), the following features must inevitably exist :—

- (1) There should be pendency of any proceeding in respect of an industrial dispute;
- (2) The workman claiming protection should not only be a workman within the meaning of Section 33(2) (b) but he should be a workman concerned in the pending dispute;
- (3) The alteration in question should have the effect of making a change in the conditions of service applicable to such workman which was applicable to him immediately before the commencement of such proceeding and such alteration should be prejudicial to his interest;
- (4) Such alteration should be in regard to any matter connected with the pending dispute."

7. Ext. 6 is the reference made by the Government which shows that the reference was made regarding the alleged reduction of retirement age of the employees of the management from 60 to 58 years and that reference is pending. The claim of the workman that he was involved in Union activities from the very beginning is not at all disputed. So, undoubtedly he was a concerned workman in the dispute.

8. The question remains to be seen whether there was any alteration in the service conditions of the workman. W.W. No.1 admitted in cross-examination that Ext. A is the appointment letter and at the time of appointment his retirement age was 58 years. Clause



19 of the Certified Standing Orders marked Ext. 11 deals with the retirement age of the employees and the retirement age as specified in the Standing Orders is not changed and the said Standing Orders, Ext. 11 is still in force. Ext. 11 reveals that the retirement age of the workman is 58 years. Ext. 2 is the orders passed by the Hon'ble Orissa High Court in O.J.C. No. 1625 of 2002. On perusal of the orders passed in the aforesaid O.J.C., it reveals that the service conditions of the members of the Union continued to be Governed by the Certified Standing Orders of the PPL and any change in the service conditions in the Certified Standing Orders of the PPL can only be made in accordance with law. So, Ext. 2 makes it clear that the service conditions of the employees were to be governed by the Certified Standing Orders and Ext. 11 shows that the retirement age is 58 years. The change of retirement age also does not amount to a change in the service conditions. In the decision reported in 2001(5) Supreme 20 (Harmohinder Singh Vrs. Kharga Canteen Ambala), their Lordships held that "the conditions of service for change of which notice is to be given under the 4th Schedule does not in terms include the subject matter of Para. 3A, namely, the fixation of a period of service or date of retirement."

9. The workman relied on a number of decisions on this point. The decision reported in AIR 1979 S.C. page-52 (Lilly Kuruan Vrs. Sr. Lewina & others) relates to the Kerala University Act. So, the facts of the said case and the other cases cited by the workman are quite different. Another case law cited by the workman relates to retrenchment but not retirement on attaining the age of superannuation. It is not disputed that the workman was retired from service on attaining the age of 58 years as per the Certified Standing Orders. In the decision reported in 1976 (II) LLJ (SC) page-259 (Mahendra Singh Dantwal Vrs. Hindustan Motors Ltd. & Others) their Lordships held that "if any employer passes an order of termination of service in exercise of his right under a contract or in accordance with the provisions of the Standing Orders and the Tribunal finds that the order is not on account of any misconduct, the question of violation of Section 33 would not arise."

In the case in hand, the service of the complainant-workman was terminated on attaining the age of superannuation but not for any misconduct. So, the petition under Section 33A of the Act is not maintainable and the workman is not entitled to any relief.

The Misc. case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK
17-3-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK
17-3-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
P. MALLICK
Under-Secretary to Government